



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Firth Construction Co., Inc.--Reconsideration

File: B-243514.4

Date: October 22, 1991

Lawrence W. Luecking for the protester.
Barbara C. Coles, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Request for reconsideration is denied where protester has
not shown that prior decision contains either errors of fact
or law, and protester merely disagrees with our prior
decision.

DECISION

Firth Construction Co., Inc. requests reconsideration of our
dismissal of its protest challenging the Small Business
Administration's (SBA) alleged failure to follow applicable
regulations by dismissing its appeal filed in connection
with request for quotations (RFQ) No. CRM-3-111877, issued
as a total set-aside for small disadvantaged business (SDB)
concerns by Boeing Petroleum Services, the prime contractor
operating and managing the Strategic Petroleum Reserve for
the Department of Energy (DOE).

We deny the request for reconsideration.

Firth initially filed an agency-level protest with DOE,
which challenged the award of a contract to Vilaret
Construction Services, Inc. on the basis that Vilaret did
not meet the RFQ's SDB set-aside requirement. Firth then
filed a protest with our Office challenging DOE's alleged
failure to forward to SBA Firth's protest objecting to the
awardee's self-certification as a small business and as an
SDB concern. While Firth's protest was pending at our
Office, DOE forwarded its size status protest to SBA. The
SBA Regional Office ruled on the portion of the protest
relating to Vilaret's status as a small business, finding
that Vilaret's affiliation with another firm made it
ineligible for award as a small business. Vilaret appealed
this determination and ultimately was found to be eligible
for award.

A copy of Firth's protest also was sent to SBA's Division of Program Certification and Eligibility for consideration of that portion dealing specifically with Vilaret's status as an SDB. SBA declined to address Firth's challenge regarding Vilaret's status as an SDB concern since it did not regard Firth's protest as a direct challenge to Vilaret's SDB status and since it had not been submitted by the contracting officer and the SBA Regional Office already had determined that Vilaret was other than small for the subject contract. Firth appealed SBA's refusal to render a decision regarding Vilaret's SDB status.

Firth then protested to our Office to challenge SBA's failure to respond to its appeal. We dismissed the protest as premature based on the fact that the appeal was still pending at SBA.

SBA subsequently dismissed Firth's appeal, finding that Firth had not provided specific, detailed evidence to support its allegation that Vilaret was not an SDB concern. Firth then protested to our Office challenging SBA's dismissal on the ground that SBA failed to follow applicable regulations relating to consideration of SDB protests.

We dismissed Firth's protest because, on its face, the protest to SBA--and subsequently to our Office--merely stated that Vilaret was not an SDB without specificity and without substantiation. Specifically, Firth did not show--and, therefore, we had not basis to conclude--that SBA's decision not to consider the challenge to Vilaret's status as an SDB on the ground that it lacked sufficient specificity was contrary to the applicable SBA regulation; the applicable regulation, 13 C.F.R. § 124.607(c) (1991), provides that "[p]rotests which do not contain sufficient specificity may be dismissed by the SBA."

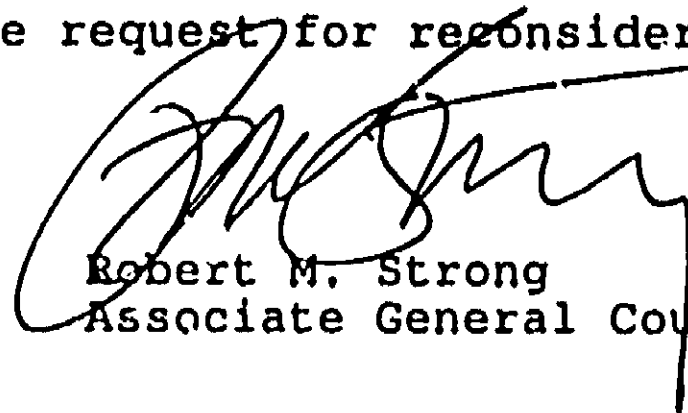
In its request for reconsideration, Firth argues that our dismissal of its protest was erroneous. Specifically, Firth claims that its initial allegation--that Vilaret was ineligible for award based on the fact that Vilaret "[was] not and has not been certified"--standing alone, "clearly met the minimum GAO [General Accounting Office] protest criteria."

Under our Bid Protest Regulations, to obtain reconsideration, the protester must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1991). Information not previously considered means information that was not available when the initial protest was filed. S/A Baltimore-I Ltd. Partnership--Recon., B-241050.3, Jan. 14, 1991, 91-1 CPD ¶ 33. The repetition of

arguments made during our consideration of the original protest and mere disagreement with our decision also fails to meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

After reviewing the reconsideration request, we conclude that Firth either has merely repeated arguments made in its original protest and considered in our decision or has merely explained in more detail the basis of its original challenge to SBA concerning Vilaret's SDB status. Since we previously considered all the essential arguments now advanced by Firth and since repetition of arguments does not warrant reversal or modification of our decision, we have no basis upon which to reconsider the protest.

The request for reconsideration is denied.



Robert M. Strong
Associate General Counsel